

ENTERED

May 11, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JEWELL THOMAS,

Plaintiff,

V.

JERRY SANCHEZ, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:22-CV-00152

ORDER ADOPTING MEMORANDUM & RECOMMENDATION

Before the Court is Magistrate Judge Mitchel Neurock's Memorandum and Recommendation ("M&R"). (D.E. 20). The M&R recommends the following:

- The Court retain Plaintiff's Eighth Amendment deliberate indifference claims against Defendants Dr. Isaac Kwarteng ("Dr. Kwarteng") in his individual capacity for monetary relief and in his official capacity for injunctive relief;
- The Court retain Plaintiff's Americans with Disabilities Act ("ADA") and Rehabilitation Act ("RA") claims against the State of Texas and Defendants Dr. Kwarteng, Warden Jerry Sanchez ("Warden Sanchez"), and Texas Department of Criminal Justice Director Bobby Lumpkin ("Director Lumpkin") in their official capacities;
- The Court dismiss Plaintiff's § 1983 claims for money damages against Dr. Kwarteng and Warden Sanchez in their official capacities without prejudice as barred by the Eleventh Amendment;
- The Court dismiss Plaintiff's Eighth Amendment deliberate indifference claims against Warden Sanchez with prejudice as frivolous or for failure to state a claim upon which relief may be granted;
- The Court dismiss Plaintiff's equal protection claims against Dr. Kwarteng and Warden Sanchez in their individual and official capacities with prejudice as frivolous or for failure to state a claim upon which relief may be granted; and
- The Court dismiss Plaintiff's ADA and RA claims against Dr. Kwarteng, Warden Sanchez, and Director Lumpkin in their individual capacities with prejudice as frivolous or for failure to state a claim upon which relief may be granted.

(D.E. 20, p. 22).

The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); General Order No. 2002-13. No objection has been filed. When no timely objection has been filed, the district court need only determine whether the Magistrate Judge's M&R is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam); *Badaiki v. Schlumberger Holdings Corp.*, 512 F. Supp. 3d 741, 743–44 (S.D. Tex. 2021) (Eskridge, J.).

Having reviewed the proposed findings and conclusions of the Magistrate Judge, the filings of the parties, the record, and the applicable law, and finding that the M&R is not clearly erroneous or contrary to law, the Court **ADOPTS** the M&R in its entirety. (D.E. 20). Accordingly, the Court **ORDERS** the following:

- The Court **RETAINS** Plaintiff's Eighth Amendment deliberate indifference claims against Defendants Dr. Kwarteng in his individual capacity for monetary relief and in his official capacity for injunctive relief;
- The Court **RETAINS** Plaintiff's ADA and RA claims against the State of Texas and Defendants Dr. Kwarteng, Warden Sanchez, and Director Lumpkin in their official capacities;
- The Court **DISMISSES** Plaintiff's § 1983 claims for money damages against Dr. Kwarteng and Warden Sanchez in their official capacities **without prejudice**;
- The Court **DISMISSES** Plaintiff's Eighth Amendment deliberate indifference claims against Warden Sanchez **with prejudice** as frivolous or for failure to state a claim upon which relief may be granted;
- The Court **DISMISS** Plaintiff's equal protection claims against Dr. Kwarteng and Warden Sanchez in their individual and official capacities **with prejudice** as frivolous or for failure to state a claim upon which relief may be granted; and
- The Court **DISMISS** Plaintiff's ADA and RA claims against Dr. Kwarteng, Warden Sanchez, and Director Lumpkin in their individual capacities **with prejudice** as frivolous or for failure to state a claim upon which relief may be

granted.

SO ORDERED.



DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

Dated: Corpus Christi, Texas
May 10th, 2023